111TH CONGRESS
1ST SESSION

H. R. 1468

To provide health care liability reform, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2009

Mr. BURGESS introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To provide health care liability reform, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 "Medical Justice Act of 2009".

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Cap on non-economic damages against health care practitioners.
Sec. 3. Cap on non-economic damages against health care institutions.
Sec. 4. Cap, in wrongful death cases, on total damages against any single health care practitioner.
Sec. 5. Limitation of insurer liability when insurer rejects certain settlement offers.
Sec. 6. Mandatory jury instruction on cap on damages.

Sec. 7. Determination of negligence; mandatory jury instruction.
Sec. 8. Expert reports required to be served in civil actions.
Sec. 9. Expert opinions relating to physicians may be provided only by actively practicing physicians.
Sec. 10. Payment of future damages on periodic or accrual basis.
Sec. 11. Unanimous jury required for punitive or exemplary damages.
Sec. 12. Proportionate liability.
Sec. 13. Defense-initiated settlement process.
Sec. 14. Statute of limitations; statute of repose.
Sec. 15. Limitation on liability for Good Samaritans providing emergency health care.
Sec. 16. Definitions.

1 **SEC. 2. CAP ON NON-ECONOMIC DAMAGES AGAINST**
2 **HEALTH CARE PRACTITIONERS.**

3 When an individual is injured or dies as the result
4 of health care, a person entitled to non-economic damages
5 may not recover, from the class of liable health care practi-
6 tioners (regardless of the theory of liability), more than
7 $250,000 such damages.

8 **SEC. 3. CAP ON NON-ECONOMIC DAMAGES AGAINST**
9 **HEALTH CARE INSTITUTIONS.**

10 When an individual is injured or dies as the result
11 of health care, a person entitled to non-economic damages
12 may not recover—

13 (1) from any single liable health care institution
14 (regardless of the theory of liability), more than
15 $250,000 such damages; and

16 (2) from the class of liable health care institu-
17 tions (regardless of the theory of liability), more
18 than $500,000 such damages.

SEC. 4. CAP, IN WRONGFUL DEATH CASES, ON TOTAL DAMAGES AGAINST ANY SINGLE HEALTH CARE PRACTITIONER.

(a) IN GENERAL.—When an individual dies as the result of health care, a person entitled to damages may not recover, from any single liable health care practitioner (regardless of the theory of liability), more than $1,400,000 in total damages.

(b) TOTAL DAMAGES DEFINED.—In this section, the term ''total damages'' includes compensatory damages, punitive damages, statutory damages, and any other type of damages.

(c) ADJUSTMENT FOR INFLATION.—For each calendar year after the calendar year of the enactment of this Act, the dollar amount referred to in subsection (a) shall be adjusted to reflect changes in the Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor. The adjustment shall be based on the relationship between—

(1) the Consumer Price Index data most recently published as of January 1 of the calendar year of the enactment of this Act; and

(2) the Consumer Price Index data most recently published as of January 1 of the calendar year concerned.

1 (d) APPLICABILITY OF ADJUSTMENT.—The dollar
2 amount that applies to a recovery is the dollar amount
3 for the calendar year during which the amount of the re-
4 covery is made final.

5 **SEC. 5. LIMITATION OF INSURER LIABILITY WHEN IN-**
6 **SURER REJECTS CERTAIN SETTLEMENT OF-**
7 **FERS.**

8 In a civil action, to the extent the civil action seeks
9 damages for the injury or death of an individual as the
10 result of health care, when the insurer of a health care
11 practitioner or health care institution rejects a reasonable
12 settlement offer within policy limits, the insurer is not, by
13 reason of that rejection, liable for damages in an amount
14 that exceeds the liability of the insured.

15 **SEC. 6. MANDATORY JURY INSTRUCTION ON CAP ON DAM-**
16 **AGES.**

17 In a civil action tried to a jury, to the extent the civil
18 action seeks damages for the injury or death of an indi-
19 vidual as the result of health care, the court shall instruct
20 the jury that the jury is not to consider whether, or to
21 what extent, a limitation on damages applies.

1 **SEC. 7. DETERMINATION OF NEGLIGENCE; MANDATORY**
2 **JURY INSTRUCTION.**

3 (a) IN GENERAL.—When an individual is injured or
4 dies as the result of health care, liability for negligence
5 may not be based solely on a bad result.

6 (b) MANDATORY JURY INSTRUCTION.—In a civil ac-
7 tion tried to a jury, to the extent the civil action seeks
8 damages for the injury or death of an individual as the
9 result of health care and alleges liability for negligence,
10 the court shall instruct the jury as provided in subsection
11 (a).

12 **SEC. 8. EXPERT REPORTS REQUIRED TO BE SERVED IN**
13 **CIVIL ACTIONS.**

14 (a) SERVICE REQUIRED.—To the extent a pleading
15 filed in a civil action seeks damages against a health care
16 practitioner for the injury or death of an individual as the
17 result of health care, the party filing the pleading shall,
18 not later than 120 days after the date on which the plead-
19 ing was filed, serve on each party against whom such dam-
20 ages are sought a qualified expert report.

21 (b) QUALIFIED EXPERT REPORT.—As used in sub-
22 section (a), a qualified expert report is a written report
23 of a qualified health care expert that—

24 (1) includes a curriculum vitae for that expert;
25 and

1 (2) sets forth a summary of the expert opinion
2 of that expert as to—
3 (A) the standard of care applicable to that
4 practitioner;
5 (B) how that practitioner failed to meet
6 that standard of care; and
7 (C) the causal relationship between that
8 failure and the injury or death of the individual.
9 (c) MOTION TO ENFORCE.—A party not served as
10 required by subsection (a) may move the court to enforce
11 that subsection. On such a motion, the court—
12 (1) shall dismiss, with prejudice, the pleading
13 as it relates to that party; and
14 (2) shall award to that party the attorney fees
15 reasonably incurred by that party to respond to that
16 pleading.
17 (d) USE OF EXPERT REPORT.—
18 (1) IN GENERAL.—Except as otherwise pro-
19 vided in this section, a qualified expert report served
20 under subsection (a) may not, in that civil action—
21 (A) be offered by any party as evidence;
22 (B) be used by any party in discovery or
23 any other pretrial proceeding; or
24 (C) be referred to by any party at trial.
25 (2) VIOLATIONS.—

(A) BY OTHER PARTY.—If paragraph (1) is violated by a party other than the party who served the report, the court shall, on motion of any party or on its own motion, take such measures as the court considers appropriate, which may include the imposition of sanctions.

(B) BY SERVING PARTY.—If paragraph (1) is violated by the party who served the report, paragraph (1) shall no longer apply to any party.

SEC. 9. EXPERT OPINIONS RELATING TO PHYSICIANS MAY BE PROVIDED ONLY BY ACTIVELY PRACTICING PHYSICIANS.

(a) IN GENERAL.—A physician-related opinion may be provided only by an actively practicing physician who is determined by the court to be qualified on the basis of training and experience to render that opinion.

(b) CONSIDERATIONS REQUIRED.—In determining whether an actively practicing physician is qualified under subsection (a), the court shall, except on good cause shown, consider whether that physician is board-certified, or has other substantial training, in an area of medical practice relevant to the health care to which the opinion relates.

(c) DEFINITIONS.—In this section:

1 (1) The term ''actively practicing physician''
2 means an individual who—
3 (A) is licensed to practice medicine in the
4 United States or, if the individual is a defend-
5 ant providing a physician-related opinion with
6 respect to the health care provided by that de-
7 fendant, is a graduate of a medical school ac-
8 credited by the Liaison Committee on Medical
9 Education or the American Osteopathic Asso-
10 ciation;
11 (B) is practicing medicine when the opin-
12 ion is rendered, or was practicing medicine
13 when the health care was provided; and
14 (C) has knowledge of the accepted stand-
15 ards of care for the health care to which the
16 opinion relates.
17 (2) The term ''physician-related opinion'' means
18 an expert opinion as to any one or more of the fol-
19 lowing:
20 (A) The standard of care applicable to a
21 physician.
22 (B) Whether a physician failed to meet
23 such a standard of care.

(C) Whether there was a causal relationship between such a failure by a physician and the injury or death of an individual.

(3) The term ''practicing medicine'' includes training residents or students at an accredited school of medicine or osteopathy, and serving as a consulting physician to other physicians who provide direct patient care.

SEC. 10. PAYMENT OF FUTURE DAMAGES ON PERIODIC OR ACCRUAL BASIS.

(a) IN GENERAL.—When future damages are awarded against a health care practitioner to a person for the injury or death of an individual as a result of health care, and the present value of those future damages is $100,000 or more, that health care practitioner may move that the court order payment on a periodic or accrual basis of those damages. On such a motion, the court—

(1) shall order that payment be made on an accrual basis of future damages described in subsection (b)(1); and

(2) may order that payment be made on a periodic or accrual basis of any other future damages that the court considers appropriate.

(b) FUTURE DAMAGES DEFINED.—In this section, the term ''future damages'' means—

(1) the future costs of medical, health care, or custodial services;

(2) noneconomic damages, such as pain and suffering or loss of consortium;

(3) loss of future earnings; and

(4) any other damages incurred after the award is made.

SEC. 11. UNANIMOUS JURY REQUIRED FOR PUNITIVE OR EXEMPLARY DAMAGES.

When an individual is injured or dies as the result of health care, a jury may not award punitive or exemplary damages against a health care practitioner or health care institution unless the jury is unanimous with regard to both the liability of that party for such damages and the amount of the award of such damages.

SEC. 12. PROPORTIONATE LIABILITY.

When an individual is injured or dies as the result of health care and a person is entitled to damages for that injury or death, each person responsible is liable only for a proportionate share of the total damages that directly corresponds to that person's proportionate share of the total responsibility.

SEC. 13. DEFENSE-INITIATED SETTLEMENT PROCESS.

(a) IN GENERAL.—In a civil action, to the extent the civil action seeks damages for the injury or death of an

1 individual as the result of health care, a health care practi-
2 tioner or health care institution against which such dam-
3 ages are sought may serve one or more qualified settle-
4 ment offers under this section to a person seeking such
5 damages. If the person seeking such damages does not ac-
6 cept such an offer, that person may thereafter serve one
7 or more qualified settlement offers under this section to
8 the party whose offer was not accepted.

9 (b) QUALIFIED SETTLEMENT OFFER.—A qualified
10 settlement offer under this section is an offer, in writing,
11 to settle the matter as between the offeror and the offeree,
12 which—

13 (1) specifies that it is made under this section;
14 (2) states the terms of settlement; and
15 (3) states the deadline within which the offer
16 must be accepted.

17 (c) EFFECT OF OFFER.—If the offeree of a qualified
18 settlement offer does not accept that offer, and thereafter
19 receives a judgment at trial that, as between the offeror
20 and the offeree, is significantly less favorable than the
21 terms of settlement in that offer, that offeree is respon-
22 sible for those litigation costs reasonably incurred, after
23 the deadline stated in the offer, by the offeror to respond
24 to the claims of the offeree.

1 (d) LITIGATION COSTS DEFINED.—In this section,
2 the term ''litigation costs'' include court costs, filing fees,
3 expert witness fees, attorney fees, and any other costs di-
4 rectly related to carrying out the litigation.
5 (e) SIGNIFICANTLY LESS FAVORABLE DEFINED.—
6 For purposes of this section, a judgment is significantly
7 less favorable than the terms of settlement if—
8 (1) in the case of an offeree seeking damages,
9 the offeree's award at trial is less than 80 percent
10 of the value of the terms of settlement; and
11 (2) in the case of an offeree against whom dam-
12 ages are sought, the offeror's award at trial is more
13 than 120 percent of the value of the terms of settle-
14 ment.
15 **SEC. 14. STATUTE OF LIMITATIONS; STATUTE OF REPOSE.**
16 (a) STATUTE OF LIMITATIONS.—When an individual
17 is injured or dies as the result of health care, the statute
18 of limitations shall be as follows:
19 (1) INDIVIDUALS OF AGE 12 AND OVER.—If the
20 individual has attained the age of 12 years, the
21 claim must be brought either—
22 (A) within 2 years after the negligence oc-
23 curred; or
24 (B) within 2 years after the health care on
25 which the claim is based is completed.

1 (2) INDIVIDUALS UNDER AGE 12.—If the indi-
2 vidual has not attained the age of 12 years, the
3 claim must be brought before the individual attains
4 the age of 14 years.
5 (b) STATUTE OF REPOSE.—When an individual is in-
6 jured or dies as the result of health care, the statute of
7 repose shall be as follows: The claim must be brought
8 within 10 years after the act or omission on which the
9 claim is based is completed.
10 (c) TOLLING.—
11 (1) STATUTE OF LIMITATIONS.—The statute of
12 limitations required by subsection (a) may be tolled
13 if applicable law so provides, except that it may not
14 be tolled on the basis of minority.
15 (2) STATUTE OF REPOSE.—The statute of
16 repose required by subsection (b) may not be tolled
17 for any reason.
18 **SEC. 15. LIMITATION ON LIABILITY FOR GOOD SAMARI-**
19 **TANS PROVIDING EMERGENCY HEALTH**
20 **CARE.**
21 (a) WILLFUL OR WANTON NEGLIGENCE RE-
22 QUIRED.—A health care practitioner or health care insti-
23 tution that provides emergency health care on a Good Sa-
24 maritan basis is not liable for damages caused by that care

1 except for willful or wanton negligence or more culpable
2 misconduct.

3 (b) GOOD SAMARITAN BASIS.—For purposes of this
4 section, care is provided on a Good Samaritan basis if it
5 is not provided for or in expectation of remuneration.
6 Being entitled to remuneration is relevant to, but is not
7 determinative of, whether it is provided for or in expecta-
8 tion of remuneration.

9 **SEC. 16. DEFINITIONS.**

10 In this Act:

11 (1) HEALTH CARE INSTITUTION.—The term
12 ''health care institution'' includes institutions such
13 as—

14 (A) an ambulatory surgical center;

15 (B) an assisted living facility;

16 (C) an emergency medical services pro-
17 vider;

18 (D) a home health agency;

19 (E) a hospice;

20 (F) a hospital;

21 (G) a hospital system;

22 (H) an intermediate care facility for the
23 mentally retarded;

24 (I) a nursing home; and

25 (J) an end stage renal disease facility.

1 (2) HEALTH CARE PRACTITIONER.—The term
2 ''health care practitioner'' includes a physician and
3 a physician entity.
4 (3) PHYSICIAN ENTITY.—The term ''physician
5 entity'' includes—
6 (A) a partnership or limited liability part-
7 nership created by a group of physicians;
8 (B) a company created by physicians; and
9 (C) a nonprofit health corporation whose
10 board is composed of physicians.

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